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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/696,555	10/30/2003	Ian Burgess	2073.0120000/DSC/RLP	5931
26111	7590	11/15/2005	EXAMINER	
STERNE, KESSLER, GOLDSTEIN & FOX PLLC 1100 NEW YORK AVENUE, N.W. WASHINGTON, DC 20005			STASHICK, ANTHONY D	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 11/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/696,555	BURGESS, IAN
	Examiner Anthony Stashick	Art Unit 3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 31 August 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration. .
- 5) Claim(s) 16 and 17 is/are allowed.
- 6) Claim(s) 1,2,7-15 and 18-20 is/are rejected.
- 7) Claim(s) 3-6 and 21 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 30 October 2003 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-2, 7 and 12-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Lin 4,733,483. Lin '483 discloses all the limitations of the claims including the following: a midsole 10 having at least one protrusion 34 disposed in a forefoot region (see Figure 1); a plate 18 having at least one receptacle 28 disposed therein; the plate placed adjacent to the midsole such that the receptacle aligns with the protrusion (see Figure 3); the diameter of the receptacle is not greater than the diameter of the protrusion (see Figure 3); an outsole 14 fixedly attached to the plate and the midsole; the outsole is disposed along the entire length of the shoe (see Figure 3); at least one projection 34 is disposed in a forefoot region of the outsole; the plate 18 is attached to the midsole and outsole (see Figure 3, outsole is 16, midsole is 22).

3. Claims 1-2, 14-15 and 18-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Brue' 6,076,282. Brue' '282 discloses all the limitations of the claims including the following: a midsole S having at least one protrusion 1, 1a disposed in a forefoot region; a plate P having at least one receptacle 2 disposed therein; the plate placed adjacent to the midsole such that the receptacle aligns with the protrusion (see Figure 6); the diameter of the receptacle is not greater than the diameter of the protrusion (see Figure 6); an outsole fixedly attached to the plate and the midsole (see col. 6, lines 22-56); the outsole is disposed along the entire length of the shoe (col.

6, lines 22-56); a cutout 2 in the midsole wherein the protrusion is disposed in the cutout (see Figure 6); the protrusion is disposed in the cutout such that an outward-most extremity of the protrusion approximately aligns with an outward-most surface of the midsole (see Figure 6). With respect to the limitations of claims 18 and 19, the mere usage of Brue' '282 in the fashion disclosed would meet the limitations in the claims.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 8-10 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1 and 18 above in view of Ludemann 6,199,304. The references as applied to claims 1 and 18 above disclose all the limitations of the claims except for a sockliner having at least one nub disposed in a forefoot region on a lower surface and wherein the sockliner is placed on top of the midsole with the nub facing the midsole and an abrasion-resistant material attached to the upper surface of the sockliner with absorbent properties. Ludemann '304 teaches that a sockliner 10 with an upper layer of abrasion resistant and absorbent material (see col. 3, line 27-col. 4, line 28) can be placed on top of a midsole to aid in cushioning the user's foot and providing comfort to the user. Therefore, it would have been obvious, to one of ordinary skill in the art at the time the invention was made, to place a

sockliner, such as that taught by Ludemann '304, on the midsole of the references as applied to claims 1 and 18 above, to provide cushioning and comfort to the user's foot.

6. Claim 11 is rejected under 35 U.S.C. 103(a) as being obvious over either one of the references as applied to claim 1 above. Each of the references as applied to claim 1 above discloses all the limitations of the claims except for a stiff board disposed in the arch area of the shoe. In making shoes, it has been well known to place lasting boards, a stiff board, in the arch area to give support to the user's foot during use. Therefore, it would have been obvious, to one of ordinary skill in the art at the time the invention was made, to place a last board in the arch of the shoe of the references as applied to claim 1 above, to aid in supporting the user's arch during use.

Allowable Subject Matter

7. Claims 16-17 are allowed over the prior art of record.
8. Claims 3-6 and 21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

9. Applicant's arguments filed August 31, 2005 have been fully considered but they are not persuasive. Applicant argues that Lin does not teach the diameter of the receptacle not being greater than the diameter of said protrusion. Since the claim requires "at least one protrusion" and then later the claim requires "said protrusion", since the more than one protrusion of Lin meets the at least one protrusion limitation and the "said protrusion" can be determined to

encompass the “at least one protrusion” earlier in the claim, the “said protrusion” would encompass all the protrusion and therefore, Lin would meet the claim limitations. Applicant further argues that Brue does not teach the plate and midsole as noted by the examiner. As noted by the examiner, the plate P and midsole S are a plate and midsole as determined by the examiner based upon their location. The examiner is not limited to what the reference refers to these portions, but can understand the references as one of ordinary skill in the art may see the reference. With respect to the argument directed to “deflecting” into the hole, since Brue occupies the hole, in it’s broadest reasonable interpretation, it can be said that it “deflects” into the hole during it’s occupation.

Conclusion

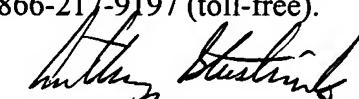
10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Stashick whose telephone number is 571-272-4561. The examiner can normally be reached on Monday-Thursday 8:30 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Anthony Stashick
Primary Examiner
Art Unit 3728

ADS